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MORAL DELINQUENCY OR TURPITUDE

By

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In all Digests under the heading of 'WORDS AND PHRASES' one can find the words MORAL DELINQUENCY or MORAL TURPITUDE.

In Chamber's Twentieth Century Dictionary 'MORAL' means relating to character or conduct as good or evil; ethical, conformed to or directed towards right, virtuous, especially virtuous in matters of sex; capable of knowing right and wrong, subject to moral law.

DELINQUENCY means failure in or omission of duty; a fault; a crime. TURPITUDE means baseness, depravity, vileness.

In Oxford Dictionary of Current English, it is noted that 'delinquency' means neglect of duty, guilt, a sin or omission, misdeed.

In Black's Law Dictionary, Fifth Edition at page 910, it is noted 'MORAL TURPITUDE' - The act of baseness, vileness or the depravity in private and social duties which man owes to his fellow men or to society in general. Contrary to accepted and customary rule of right and duty between man and man -

TURPITUDE - in its ordinary sense inherent baseness or vileness of principles or action; shameful wickedness, depravity. In its legal sense everything done contrary to justice, honesty, modesty or good morals. An action showing gross depravity.

In the Random House Dictionary of the English language, College Edition, it is explained as follows:

MORAL - of pertaining to or concerned with right conduct or its principles. Being in accordance with principles. Conforming to these principles rather than to law, custom etc.

thus, -

"MORAL TURPITUDE - Anything done contrary to jujstice, honesty, principle or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow-man or to society in general contrary to the accepted and customary rule of right and duty between man and man.

Section 25 (1) of the Tamil Nadu Village Panchayat Act, 1958, says, "A person who has been sentenced by a Criminal Court to imprisonment for any offence involving moral delinquency (such sentence not having been reversed) shall be disqualified for election as a member while undergoing the sentence and for five years from the date of expiration thereof. There is no definition for "offence involving moral delinquency" in the Act. There is no list of offences also.

'Picketing' by political agitators had been always brought under Section 7 (1) (a) of the Criminal Law Amendment Act, 1932, which was passed only for this specific purpose. This section says:

"Whoever with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to do or intimidates such person or any member of his family or person in his employ or loiters at or near a place where such person or member or employed person resides, or works or carries on business or happens to be, or persistently follows him from place to place or interferes with any property owned or used by him in the use thereof..... shall be punished for a term which may extend to six months or with fine which may extend to five hundred rupees or with both."

Section 5 of the Prevention of Insults to National Honour Act, says as follows: Whoever wilfully burns or desecrates or insults any copy or a copy of a part of the Constitution of India shall be punishable with imprisonment of either

We will see the provisions in some other Acts also in this connection.

Section 10 (h) (i) of the Banking Companies Act says: "No Banking Company shall employ any person who is or at any time has been adjudged insolvent and has suspended payment or has compounded with his creditor, or who is or has been convicted of a criminal offence involving moral turpitude."

Standing Order 16 (x) of Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, states as follows:-

"The following acts and omissions shall be treated as misconduct--

Conviction by a Court of Law for any criminal offence involving moral turpitude:"

The provisions in Tamil Nadu Prohibition Act, Explosive Substances Act and sections in Penal Code and Criminal Procedure Code may also be taken into consideration in the study of the meaning and impact of moral delinquency or moral turpitude by different decisions of Courts.

In *Durga Singh v. State of Punjab*, A.I.R. 1957 Punj. 97, it is observed that the Constitution makes Article 311 (2) inapplicable to any Government employee who has been convicted of a criminal charge. It is not laid down that such a conviction must involve moral turpitude. Further even if the words 'involving moral turpitude' are held to be implied in 'conviction on a criminal charge' in proviso to Article 311 (2) then if a member of the Police force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is convicted by a Criminal Court under section 34 of Police Act, 1861, his conviction should be held as involving moral turpitude................. The term "moral turpitude" is rather a vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not.

Sahiram v. Rajasthan State, A.I.R. 1957 Raj. 27, deals with the case of a person who has been convicted of an offence of evading customs duty under the Customs Act and is disqualified under section 11 (g) of Rajasthan Panchayat Act, as the offence certainly involves moral turpitude. The fact that the conviction is more than five years old will not make it anytheless a disqualification unless there was a general order of the Government making persons convicted, say, more than five years before the election, eligible.

Baleswar Singh v. District Magistrate and Collector, A.I.R. 1959 All. 71, points out that the expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness o. character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

The offence under section 182, Penal Code, can take two shapes, one falling under clause (c), in which case it is unnecessary that the intention is that the public servant should act on the false information to the injury or annoyance of any person, and the other falling under clause (b) where the intention is that he should so act. A case falling under clause (b) will doubtless involve moral turpitude but there may be cases where

although the false information is given with the intention to cause a public servant to do or omit to do anything, there is no intention that the public servant should use his power to the injury or annoyance of any person. Such cases will fall under clause (a) where it is unnecessary that the act or omission should effect or cause injury to some third person.

Clause (a) of section 182 enjoins a duty on persons to abstain from giving such information etc., to a public servant. A duty has been cast on individuals not to act in a certain manner and detract public servants from their normal course. This is a duty which every individual who is governed by the above law owes to the society whose servant every public servant obviously is. An individual's conduct in giving false information to a public servant in the circumstances stated in section 182 (a) too is therefore contrary to justice, honesty and good morals and shows depravity of character and wickedness. Therefore an offence under section 182, Indian Penal Code, whether falling under clause (a) or clause (b) is an offence involving moral turpitude. *Shri Sita Ram v. The Dt. Magistrate,* (1957) All.W.R. 339 : (1957) All. L.J. 383, Dist.

In *Shiva Nand v. Sub Divisional Officer, Chunar,* (1961) R.D. (H.C.) 186, Mr. Justice Mukerji states as follows: "The meaning given to the phrase 'moral turpitude' by Bouvier.......indicated that 'moral turpitude' and 'turpitude' mean almost the same type or failing in a man's character or protray the same type of baseness in a man's moral and mental make-up..... Ideas of morals often undergo changes in different periods of a country's history. It is also true that different people of the world sometimes differ as to whether a particular act is moral or immoral. Whenever a question has to be considered as to how that act is viewed by the society or the community as the case may be, and if the society or the community views such act as involving moral turpitude, even though particular individual may not consider it so will not make the act a moral one or a praise-worthy act. Therefore, whether an act involves moral turpitude or not has to be determined not necessarily on abstract notions of the rights and wrongs involved or the harm or the good coming out of the act but how that act is looked upon in the society where the act has been committed. The phrase 'moral turpitude' refers to acts of baseness, acts which have an element of vileness or act which are harmful to society in general or contrary to accepted rules of rights and duties between man and man. It may be that some acts involve moral culpability in a larger degree than other acts but nevertheless all such acts do involve moral culpability. *Shiva Nand's case,* (1961) R.D. (H.C.) 186. The Punjab High Court has also given the same opinion as Tandon, J., in *Durga Singh v. State of Punjab,* A.I.R. 1957 Punj. 97, Mr. Justice A.P. Srivatsava in *Mangali v. Chakka Lal and others,* A.I.R. 1963 All. 527, lays down: "from consideration of the dictionary meaning of the words 'moral' turpitude' as well as real *ratio decidendi* of the cases the principle which emerges appears to be that the question whether a certain offence involves moral turpitude or not will necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving moral turpitude. Had that been so, the qualification involving 'moral turpitude' would not have been used by the Legislature and it would have disqualified every person who had been convicted of any offence. The tests which should ordinarily be applied for judging whether a certain offence does, or does not involve moral turpitude appear to be (1) whether the act leading to a conviction was such as could shock the conscience of society in general, (2) whether the motive which led to the act was a base one, and (3) whether on account of the act having been committed the perpetrator could be considered to be of depraved character or a person who was to be looked down upon by the Society.......but the above are the general tests which should be sufficient for enabling one to arrive at a correct conclusion on the question"

But according to Chandra Reddy, C.J., and Natesan, J., if a person is convicted for an offence under section 5 of the

Insult to National Honour Act, and sentenced to imprisonment, section 25 of the Panchayat Act of 1958 would clearly ban the entry of such a person into the body of the Panchayat...... *Tamizhazhagan v. R.D.O.*, (1966) 2 M.L.J. 194 : (1966) 79 L.W. 542.

In *Mangali v. Chhakki Lal and others*, A.I.R. 1963 All. 526, it is said "With great respect, it appears to me that some of the observations made in these decisions have been too widely stated and if followed literally may make every act punishable in law an offence involving moral turpitude. That, however could not be the intention with which those observations were made. From consideration of the dictionary meaning of the words 'moral' and 'turpitude' as well as the real *ratio decidendi* of the cases the principle which emerges appears to be that the question whether a certain offence involves moral turpitude or not will necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving moral turpitude. Had that been so, the qualification "involving moral turpitude" would not have been used by the Legislature and it would have disqualified every person who had been convicted of any offence. The tests which should ordinarily be applied for judging whether a certain offence does or does not involve moral turpitude appear to be: (1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general, (2) Whether the motive which led to the act was a base one, and (3) whether on account of the act having been committed the perpetrator could be considered to be a depraved character or a person who was to be looked down upon by the society.

No absolute standard can be laid down for deciding whether a particular act is to be considered as one involving moral turpitude but the above are the general tests which should be applied and which should in most cases be sufficient for enabling one to arrive at a correct conclusion on the question.

Applying the above mentioned test to the facts of the present case it cannot be overlooked that in the District of Etawah to which the respondent belongs there was no prohibition against taking bhang. In that district bhang could be had from a licensed shop by any man. It is also well known that bhang is sometimes used as medicine. The quantity which was found in possession of the respondent was a very small quantity of one tola. The taking of bhang either as a medicine or as an intoxicant is not considered undesirable by society in general and in most Districts of this State the practice of taking bhang is fairly common. The respondent would not have been convicted at all if that small quantity of bhang had been found in his possession in his own District. Unfortunately, when he had gone in the barat he had taken that quantity of bhang with him and as he was found to be in possession of the article in a District where prohibition was in force he was held guilty under section 60 (a) of the Excise Act. There was in the present case, therefore, no base motive leading to the crime. The act did not also show any depravity in the character of the respondent nor had the respondent done anything which was considered base or demeaning by society in general. In these circumstances the conviction of the respondent was really a technical one and could not be considered to be in respect of an offence involving moral turpitude."

In *Sornam (alias) Easwaramoorthy v. The Election Tribunal of Ambasamudram*, (1964) 2 M.L.J. 42, the Court stated:

"In the decision of this Court in C.R.P. No.1005 of 1961, Anantanarayanan, J., observed that, while the expression 'moral delinquency' has not been defined "it is clear enough that all technical and formal offences, and offences not involving *mens rea* would be automatically excluded" from that expression. But, where a person has the guilty intention of transgressing law and commits the act with full knowledge that he is offending the law, it could certainly come within the scope of the expression 'moral delinquency'.

The learned Judge observed:

"After a careful consideration of this aspect, I am inclined to feel that any grave criminal offence which involves an element of guilty knowledge, and which thus transgresses the majesty of the law of crimes, will necessarily involve also an element of 'moral delinquency' because of its anti-social content." ... Offences of criminal conspiracy to set fire to and blow up railway bridges and the like and violation of Explosive Substances Act for those purposes must be regarded as offences involving moral delinquency and a person convicted for such offences is disqualified for election as member of a Panchayat.

In a Writ Petition by *N.V.Natarajan and another, In re* (1964) 2 M.L.J. 530 : A.I.R. 1965 Mad. 11, Veeraswami, J., as he then was, states "It is not also inconceivable that when a copy of the Constitution is wilfully burnt, desecrated or insulted, it is likely to disturb public tranquillity. It is also not inconceivable that in a broad sense, such an act may affect public safety and that it may further be regarded as opposed to decency and good morals", ...

In *Risal Singh v. Chandgi Ram*, A.I.R. 1966 Punj. 393, it has been observed:- The learned Counsel for the appellant was unable to cite any direct authority for the proposition that conviction for an offence under section 19 (f) of the Indian Arms Act should be taken to amount to moral turpitude within the meaning of the statutory provisions, but he referred to a number of decisions in which there was some discussion of the connotation of the term "moral turpitude". In *Baleshwar Singh v. District Magistrate and Collector, Banaras*, A.I.R. 1959 All. 71, which has been referred to by the learned single Judge also, J.K. Tandon, J., observed:- "The expressed 'moral turpitude' is not defined anywhere but it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct." The learned Judge was dealing with the case of conviction under section 182, Indian Penal Code, for making a false report and in holding that conviction for such an offence involved moral turpitude he relied on an earlier decision of the Allahabad High Court reported in *Sita Ram v. District Magistrate, Pilibhit*, (1957) All. L.J. 383. While he held that every false statement made by a person may not be 'moral turpitude', it was observed that it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to his society in general. These observations were considered by another learned Judge of the Allahabad High Court, A.P. Srivastava, J., in *Mangali v. Chhakki Lal*, A.I.R. 1963 All. 527, on which also the learned Counsel for the appellant relied. A.P. Srivastava, J., was of the opinion that some of the observations made by J.K.Tandon, J., had been too widely stated and, if followed literally, may make every act punishable in law an offence involving moral turpitude, which, of course, could not have been the intention of the Legislature otherwise the qualification "involving moral turpitude" would not have been used by the Legislature and it would have merely disqualified every person who had been convicted of any offence.

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The offence of which the respondent in the Writ Petition had been convicted in A.I.R. 1963 All. 527, was the possession of a very small quantity, *viz.*, one tola of bhang, for which the sentence imposed was a fine of Rs.10/-. In the particular District in which the bhang, was seized from the man the possession of bhang was an offence under section 50 of the U.P. Excise Act, while in the District to which he belonged there was no prohibition against taking bhang. The learned Judge held that the act did not show any depravity of character of the respondent nor had the respondent done anything which was considered base or demeaning by society in general; so that the conviction did not involve any moral turpitude."

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On the facts of the case before us we are unable to find any error in the view of the learned Single Judge that the offence for which Chandgi Ram respondent was convicted implied no such depravity and wickedness of character or disposition which would involve any moral turpitude. As observed by the learned Single Judge, people keep fire-arms for their personal safety and sometimes they resort to keeping arms without a licence when they feel that their status in society is not such as would enable them to get a licence from the authorities. No doubt they commit a contravention of the law, but it cannot necessarily be pastulated that this contravention involved moral depravity and vileness of character......"

In *Tamizhazhagan's case*, (1966) 79 L.W. 542 : (1964) 2 M.L.J. 194 : (1966) M.L.J. (Crl.) 609 : I.L.R. (1967) 3 Mad. I, where Chandra Reddy, C.J., and Natesan, J., stated "If a person is convicted for an offence under section 5 of the Insult to National Honour Act and sentenced to imprisonment, section 25 of the Panchayat Act of 1958 would clearly ban the entry of such person into the body of the Panchayat as members.

In *Jaysing Rangarao Raut v. Maharashtra State Electricity Board*, (1980) 1 L.L.J. 117, it is stated,

"Can it be said that this action of the petition for which he has been convicted constitutes an offence involving moral turpitude? The term 'moral turpitude' by its very nature is somewhat nebulous, because it involves an examination of an action in the light of the prevailing moral norms. Unlike legal norms, moral norms are somewhat nebulous. They can vary from time to time, from society to society and even from individual to individual. Hence it is quite possible that an action which may be violative of moral norms in one society may appear acceptable to another society. Hence one can only judge the action in any given case in the light of what one considers to be the prevailing moral norms of the society in which such an action has taken place. Secondly, the action should not merely be contrary to moral norms, but it should involve a violation of the moral code in such a manner that it indicates baseness or depravity of character."

In *The Management of Tractors and Farm Equipments Ltd. v. The Presiding Officer, I Addl. Labour Court, and T.A. Doss*, (1983) 1 M.L.J. 41, it has been held,

"From the above it is clear that every act punishable in law would not amount to an offence involving moral turpitude. If that had been the intention, then, there is no necessity at all for statutes, to say that a person convicted of an offence involving moral turpitude would be exposed to certain consequences or disqualification. The Legislature would have merely stated that a person who is punished for violation of any law would be exposed to such consequences, or disqualification. The question whether conviction for a particular offence involves moral turpitude will depend upon the facts and circumstances of the case. However, in order to come within the scope of the phrase 'moral turpitude' there must be an element of baseness and depravity in the act for which a particular individual has been punished. The act must be vile or harmful to society in general or contrary to accepted rules of right and duties between man and man. Mere violation of a particular statute cannot amount to the commission of an act involving moral turpitude. I am in complete agreement with Srivastava, J., of the Allahabad High Court in *Mangali v. Chhakka Lal*, A.I.R. 1963 All. 527, who has laid down the following tests: (1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general?; (2) Whether the motive which led to the act was a base one?; and (3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society?. Tested in the light of the above principles, the punishment of an individual for consuming liquor without permit in violation of the provisions of the Prohibition Act cannot be said to be an offence

involving moral turpitude, it cannot be said that drinking is considered by society to be so base or vile as to characterise a man who consumes liquor as one of depraved character or as one who is to be looked down upon by society. Further, Prohibition Act itself provides permit to be granted by the State Government under certain circumstances. The question whether consumption of alcoholic liquor by itself makes a man to be ostracized by society on the ground that he is a man of depraved character has to be decided, in my opinion, not on the basis of a prohibition law prevalent in a particular State, but on the basis of the situation in the country as a whole. No doubt, in the State of Tamil Nadu, there is a Prohibition Act which at the relevant time was more stringent than what it is today. At the same time, there are States in India where there is no prohibition at all. I am emphasising this aspect only to show that drinking as such is not considered as harmful by society in general or contrary to accepted rules of rights and duties between men and men. I am therefore of the view that conviction for an offence for consumption of liquor under the Prohibition Act does not amount to an offence involving moral turpitude."

In the result, 'moral delinquency' or 'turpitude' is an important element in the Law of Criminology and this has to be considered and construed carefully in attaching it with the offence either under the Penal Code or under any special enactment since it will be a bar for participating in democratic activities and also in the service world of mankind in the country.

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JUDGMENT DEBTORS' PROCRASTINATION AND JUDICIAL LEGISLATION.

By

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In *Neelambal and another v. Mohanram Chettiar and another,* (1984) 2 M.L.J. 264. Justice T.Sathiadev has held: "When an auction sale held in a civil suit could be set aside under provisions made in special enactments which incorporate all or some of the aspects covered by Rules 89 to 91 of Order 21 then the Court is equally bound to await disposal of such application before an order of confirmation could be made. It is not as if proceedings taken under the Civil Procedure Code in bringing a property of a judgment-debtor to sale could not be touched upon or covered by provisions made under special enactments. When certain special enactments under certain circumstances envisage nullification of decree passed by Civil Court, or execution taken being closed on confirmation of sale being set aside on payment of only a portion of the decree amount and the like, they stand on a similar footing as that of Rules 89 to 91. An order of confirmation has certain consequences to flow out of it and in extending relief under special enactments it has a determinative effect upon rights to claim reliefs and the like. Hence when in law under special enactment application could be filed for setting aside a Court auction sale, which is awaiting confirmation a Civil Court would not be right in confirming a sale, by confining its attention only to Order 21, Rule 92, Civil Procedure Code. While passing an order, a Court is duty bound to take note of changing laws and the rights which have been conferred on litigating persons under different enactments, and which have a bearing and nexus to the orders to be passed under co-related enactments .... a formal order of confirmation cannot be passed because a Civil Court is confined not only to the Code of Civil Procedure but enforceable provisions of special enactments ...."

The facts of the case briefly stated are as follows:

The property of the judgment-debtor was brought for sale and purchased by a third party auction purchaser in 1972. An application to set aside the sale under Order 21, Rule 90, Civil Procedure Code, was dismissed though taken upto the High Court reaching a finding as early as 1974 or 1975. In the meanwhile the judgment-debtor died and one of the L.Rs. filed an application to scale down the decree under the Tamil Nadu Act (IV of 1938), and that was dismissed. Again another application was filed and it went upto the High Court and was remanded. By this time Tamil Nadu Act 13 of 1980 was passed and an application under that enactment was also filed. Another L.R. of the judgment-debtor filed an application under Order 34, Rule 5, Civil Procedure Code, claiming redemption, but without depositing any amount into Court. The auction purchaser filed an application bringing to the notice of the Court that the sale must be deemed to have been confirmed on the dismissal of the application under Order 21, Rule 90, Civil Procedure Code, in 1974 or 1975, and praying for a formal order of confirmation. This application was allowed and the Revision against the order has evoked the observations and findings of his Lordship referred to supra.

Order 21, Rule 92 (1) of the Civil Procedure Code, reads thus:

"Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute"

In *Janak Raj v. Gurdal Singh and another,* A.I.R. 1967 S.C. 608, the Supreme Court declares:-

"There is no provision in the Code of Civil Procedure of 1908, either under Order XXI or elsewhere which provides that the sale is not to be confirmed if it be found that the decree under which the sale was ordered has been reversed before the confirmation of

"The Code of Civil Procedure of 1908 contains eloborate provisions which have to be followed in cases of sales of properties in execution of a decree. It also lays down how and in what manner such sales may be set aside. Ordinarily if no application for setting aside a sale is made under any of the provisions of Rules 89 to 91 of Order XXI, or when any application under any of those rules so made is disallowed the Court has no choice in the matter of confirming the sale and the sale must be made absolute. If it was the intention of the Legislature that the sale was not to be made absolute because the decree had ceased to exist, we should have expected a provision to that effect either in Order XXI or in Part II of the Code of Civil Procedure of 1908 which contains sections 36 to 71."

"Under the present Code of Civil Procedure the Court is bound to confirm the sale and direct the grant of a certificate vesting the title in the purchaser as from the date of sale, when no application as referred to in Rule 92 is made or where such application is made and disallowed."

"The policy of the Legislature seems to be that unless a stranger auction purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrowers and the creditors alike, if the sales were to be allowed to be impugned merely because the decree was ultimately set aside or modified. The Code of Civil Procedure of 1908 makes ample provision for the protection of the interest of the judgment-debtor, who feels that the decree ought not to have been passed against him". In *Hukamchand v. Basilal and others*, A.I.R. 1968 S.C. 86, the Supreme Court observes: "Order XXI, Rule 92, makes it absolutely clear that if no application is made under Rule 89, Rule 90 or Rule 91 or where such application is made and disallowed, the Court has to make an order confirming the sale and thereupon the sale becomes absolute. It is not open to the Court to go on fixing date after date and postponing confirmation of sale merely to accommodate a judgment-debtor. If that were so, the Court may go on postponing confirmation of sale for years in order to accommodate a judgment-debtor. What Order XXI, Rule 92 contemplates is that where conditions thereunder are satisfied an order for confirmation must follow."

In *Veda Gounder and others v. Arunachalam Chettiar*, (1957) 2 M.L.J. 388 : 70 L.W. 845 : A.I.R. 1958 Mad. 317, our High Court declares:

"Confirmation of sale under Order 21, Rule 92, Civil Procedure Code, does not require an application by the auction purchaser. Confirmation is a statutory obligation imposed on the Court if the requirements of Order 21, Rule 92, Civil Procedure Code, are satisfied".

In *Lakshmi Ammal v. Thangaraju Padayachi and another*, (1958) 1 M.L.J. 28 : 71 L.W. 114 :A.I.R. 1958 Mad. 396, our High Court observes:

"Under the Code of Civil Procedure, confirmation of sale held in execution of a decree is the duty of the Court which it should perform *suo motu*, without any application by any party in that regard".

In "*Sashi Bhusan Mitra and others v. Ramlal Mitra*, A.I.R. 1977 Cal. 351, the Calcutta High Court discusses the entire case law on the point, including the decisions of Supreme Court and Madras High Court referred to above and follows a decision of the Privy Council in *Nanhelal and another v. Umrao Singh*, A.I.R. 1931 P.C. 33 which declares: "When once a sale has been effected, a third party's interest intervenes and there is nothing in the rules to suggest that it is to be disregarded. Therefore, after a sale is duly held, the Court cannot refuse to confirm the sale ...... The fact that in this case, a distinct order has not been made confirming the sale is quite immaterial." On the basis of these decisions, the Calcutta High Court finds: "An express order for confirmation of sale is not necessary." All these decisions are referred to by the learned Judge in his Judgment.

But he has come to an exactly opposite conclusion ignoring the overwhelming "stare decisis" which have elaborately and in extenso laid down the correct principles of law.

In a recent decision *Ponnandurai Pandian v. State Bank of India, Tuticorin Branch and others*, 97 L.W. 646, Mohan, J., quotes with approval the decision of our High Court in *Ramaswamy Iyer v. Kamalavalli Ammal*, (1940) 2 M.L.J. 1055: 52 L.W. 955, wherein it is declared: In *Zamindar Polavaram v. Maharaja of Pittapur*, 71 M.L.J. 347 (P.C.) : 50 Mad. 910 (P.C.) : 33 L.W. 95 (P.C.), the Privy Council observes: "In the absence of an order setting aside the sale, the Court is bound to confirm it". These observations are in our view decisive of the point now under consideration. They show that after the expiry of the period for an application to set aside an auction sale, the auction purchaser can effectively sell the property purchased even in the absence of a confirmation of the auction sale by the Court, or in other words that he has a saleable interest in the property."

In the face of these decisions, the learned Judge finds "that a Civil Court is confined not only to the Code of Civil Procedure, but has to enforce the provisions of special enactments".

A court sale held under the aegis of the Civil Procedure Code, is governed only by the provisions contained therein. The government may be enacting several Debt Relief Acts every year for various reasons. That is no reason why the Courts should be postponing the confirmation of sale ad infinitum. What is to happen to the poor Court-auction-purchaser whose money is lying in court deposit indefinitely without earning any interest and who is deprived of the fruits of the court sale in being prevented from taking delivery? The learned Judge's observations clearly run counter to the decision of the Supreme Court in A.I.R. 1967 S.C. 609, wherein the Supreme Court declares: "The policy of the legislature seems to be that unless a stranger auction purchaser is protected from the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrowers and the creditors alike ...... The Code of Civil Procedure, makes ample provisions for the protection of the interest of judgment-debtors..." and that in A.I.R. 1968 S.C. 86 wherein the Supreme Court observes: It is not open to the Court to go on postponing confirmation of sale, merely to accommodate judgment-debtor. If that were so the Court may go on postponing confirmation of sale for years in order to accommodate a judgment-debtor referred to supra and which are a complete answer to the learned Judge's observations in this case. In effect, the decision would amount to Judicial Legislation to the procedural law contained in the Code of Civil Procedure, a course criticised by the Supreme Court in *S. Narayanasamy v. G. Panneerselvam*, A.I.R. 1972 S.C. 2284, wherein it states: "We think that the view contained in the judgment under appeal necessarily results in writing some words into or adding them to the relevant statutory provisions ... This contravenes the rule of plain meaning or literal construction which must ordinarily prevail. A logical corrollary to that rule is that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. An application of the rule necessarily involves that addition to or modification of words used in statutory provisions is not generally permissible .... In *Hira Devi v. District Board, Shahjahanpur*, A.I.R. 1952 S.C. 362, this Court observed: "It is certainly not the duty of the Court to stretch the words used by the legislature to fill up gaps or omissions in the provisions of an Act ..... Where the statute's meaning is clear and explicit, words cannot be interpolated ..... They should not be interpolated even though the remedy of the statute would thereby be advanced or a more desirable or just result would occur."

For the foregoing reasons, I respectfully submit that this decision requires further consideration.

DECISION IN KARUPPANNA GOUNDER v. S. RAMASAMY, (1984) 2 M.L.J. 207.

By

T.S. Parthasarathy, Advocate, Thanjavur.

The above decision has been rendered by Ramanujam, J. In that case the suit was filed for recovery of a sum of Rs.1,137.50 in consonance with the provisions of the now repealed Tamil Nadu Act 40 of 1978. After the advent of the Tamil Nadu Act 40 of 1979, the plaintiff in that case filed a suit for recovery of the balance amount which he was not in a position to claim in the prior suit on account of the fact, that the defendant was entitled to have the debt scaled down under the provisions of Tamil Nadu Act 40 of 1978.

The trial Court upheld the contention of the defendant that the suit was barred under Order 2, rule 2, Civil Procedure Code, inasmuch as the claim in the second suit had been omitted to be made in the first suit. The plaintiff filed a revision to the High Court against the dismissal of the suit.

The learned Judge while dismissing the revision petition concurred with the finding of the trial Court and held that the suit was barred under Order 2, rule 2, Civil Procedure Code. The learned Judge has observed as follows.

"It is no doubt true that Tamil Nadu Act 40 of 1979 came into existence long after the filing of the earlier suit, O.S.No. 727 of 1978, by the petitioner. The question is not, whether Tamil Nadu Act 40 of 1979 was in force on the date of the filing of the earlier suit, but the question is whether in respect of the debt due by the respondent to the petitioner under the promissory note, the petitioner could file two suits one based on the provisions of Tamil Nadu Act 40 of 1978 and the other based on the provisions of Tamil Nadu Act 40 of 1979. To prevent such multiplicity of suits alone, Order 2, rule 2, Civil Procedure Code, has been enacted. According to that provision, in respect of the same cause of action, all reliefs should be claimed in the same suit."

The application of the provisions of Order 2, rule 2, Civil Procedure Code, postulates the following requirements viz.,

i) identity of cause of action, ii) plaintiff was entitled to more than one relief or comprehensive relief and iii) being thus entitled to a comprehensive relief, plaintiff, without the leave of the Court, omits to sue for the relief for which the 2nd suit has been filed.

Under the relevant provisions of Tamil Nadu Act 40 of 1978:

1) Where the amount advanced or incurred does not exceed Rs.500/- the whole of the principal amount together with interest shall be deemed to be wholly discharged.

2) Where the principal amount advanced or incurred exceeds Rs.500/- but does not exceed Rs.5,000/- only one half of the principal amount and one half of the interest shall be payable and

3) Where the debt exceeds Rs.5,000/- but does not exceed Rs.10,000/- only the principal amount is payable and the entire interest is wiped out. Thus the said provisions enabled the creditor to file suits against debtors entitled to the benefits of the said Act, only for recovery of the amounts as scaled down by it. This Act was repealed by Act 40 of 1979. It was published in the Gazette on 13.6.1979. By Section 1 (3) of the later enactment except certain specified sections it shall be deemed to have come into force on 15.7.1978, the date of coming into force of the prior enactment. The provision with regard to scaling down of debts, has been radically altered in the later enactment and the creditor can sue for the entire amount due, subject to the condition that on 15.7.1978, the principal amount and interest should not exceed one and a half times the amount of principal.

In the case under consideration, the creditor-plaintiff who filed the earlier suit during the currency of Act 40 of 1978

and long before coming into force of Act 40 of 1979, had to restrict his claim within statutory limits in accordance with the provisions of Act 40 of 1978. But since the later enactment enabled him to sue for the entire amount due subject to the condition that the amount does not exceed one and half times the principal as on 15.7.1978, he filed the 2nd suit for the balance amount omitted to be claimed by him in the earlier suit. The learned Judge Ramanujam, J., has held that this was an omission to claim the relief attracting the provisions of Order 2, rule 2, Civil Procedure Code. The learned Judge further observes that the plaintiff should have reserved his right to claim the balance amount, at the same time doubting whether such a reservation even if it had been made, would be legal and valid.

It has been clearly held by the Supreme Court in *State of Madhya Pradesh v. State of Maharashtra and others,* A.I.R. 1977 S.C. 1466, that the right should have existed on the date of filing of the earlier suit. If no such right was in existence on that date, he could not have claimed the relief on that basis and hence there can be no omission to sue in respect of a portion of the claim. The Supreme Court also held that to attract the provisions of Order 2, rule 2, Civil Procedure Code, the plaintiff should have been aware of the existence of such a right in him at the time of filing of the earlier suit. The relevant portion of the Judgment is extracted hereunder. "The appellant Madhya Pradesh is therefore not right in contending that the plaintiff is barred by provisions contained in Order 2, rule 2 of the Code of Civil Procedure, from asking for arrears of salary in the 1956 suit. The plaintiff could not have asked for arrears of salary on the law as it then stood. The plaintiff did not know of or possess any such right. The plaintiff therefore cannot be said to have omitted to sue for any right."

Presumably this decision rendered by the Supreme Court has not been brought to the notice of Ramanujam, J. In the case under consideration, it was not legally possible for the plaintiff to sue for the entire amount due nor could be have anticipated repeal of the enactment, to make any reservations in the plaint. In other words, the plaintiff had no right to ask for any amount higher than the one as scaled down by Act 40 of 1978 in the earlier suit.

Hence the decision, if I may say so with great respect, requires further consideration.

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A NOTE ON RAMAKRISHNAN v. SRINIVASA, (1984) 2 M.L.J. 418.

By

K.R.Natarajan, Advocate, Kallakurichi.

In the above decision, his Lordship Justice V.Ramasamy has held that execution of a sale deed is required by law to be attested by at least two witnesses under the provisions of Transfer of Property Act and since execution of the same has been specifically denied. The document could not be used as evidence unless one attesting witness at least has been called for the purpose of proving its execution.

It is respectfully submitted that this dictum does not appear to be correct. Section 54 of Transfer of Property Act does not require attestation of any witness for execution of a sale deed. In fact in A.I.R. 1975 Mad. 221, Justice Maharajan has held that attestation is not necessary for execution of sale deed and so it can be proved without examining an attesting witness.

Only Mortgage Deed, Gift Deed and Will are required by Law to be attested and a sale deed does not require attestation. This question arises often in trial Courts and so the Division Bench Judgment reported in (1984) 2 M.L.J. 418, requires further reconsideration.

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BOOK REVIEW

1. PUBLIC SERVICES IN INDIAN CONSTITUTIONAL LAW *by Prof. G.C.V. Subba Rao. [Published by Law Academy Pvt. Ltd., Hyderabad. First Edition. Price Rs.100/-*

Prof. G.C.Venkata Subba Rao is a well-known author having to his credit a number of books on different branches of Law. He has now chosen for exposition the law relating to Government Servants. Though they hold office under the pleasure of the Government, certain protection in their favour was conceived even in the Government of India Act, 1935, and the protection has been continued by and under the Constitution of India. The provisions deal from the stage of recruitment and embrace the disciplinary proceedings and the termination of service by way of punishment. The reservations in favour of the Backward Classes ensured in the Chapter on Fundamental Rights has added fresh dimensions to the problems which were brought to the courts for adjudication. The learned author has classified the mass of case-law under the relevant heads and given the problems clarity of treatment.

There are conflicts in the decisions in this branch of law as in others too. The Supreme Court itself has pointed out this conflict in, for example, *Madanmohan's case*, A.I.R. 1967 S.C. 1260 and the author has discussed the problem in Chapter 30 of his book. It may be incidentally added here that in the case of A.I.R. 1967 S.C. the page has not been printed at Page 191 of the book. That the law relating to services is still in a state of flux can be gathered from a recent decision of the Supreme Court, which has generated some controversy, overruling the decision in *Chellappan's case*, A.I.R. 1975 S.C. 2216. The earlier view of the Supreme Court was that where a public servant was found guilty of criminal conduct, he could be removed from service as a consequence, but only after giving an opportunity to show cause against such punishment. Under the present decision it appears that such enquiry would be unnecessary. This is not the place to go into the pros and cons of this problem. The book serves a useful purpose of giving all the law relating to public servants in a single volume. It would be found useful as a book of reference by those having to deal with this branch of law.

V. Sethuraman,
Judge, High Court, (Retd.)

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2. A JUDGE'S MISCELLANY (FOURTH SERIES) *by M. Hidayatullah*, 1984. [Published by N.M. Tripathi Private Limited, Bombay.]. Price Rs.65/-

A book from Mr. Hidayatullah who has been Chief Justice of India, Vice-President of India and acting President for some time is bound to compel attention. This present volume running to 167 pages contains articles on law, speeches and addresses given by the author during the three years prior to the publication and a couple of literary studies. Among the topics dealt with are Highways and Bye-laws of Justice, Capital Punishment, Parliamentary Practice and Procedure, Armament Research and Development Establishment, Local Government and Urban Development, Indian Institute of Public Administration, Industrial Supplements and the Law, etc. His views on many legal matters have given rise to acute differences in legal circles. His comments on Judicial activism, public interest litigation, capital punishment, drafting of laws etc. are critical and outspoken Apropos public interest litigation he observes:- "In fact the litigation has made a temporary splash and then like the water of a pond into which a stone makes a ripple or two, things have settled down to the old conditions. Not even legislation has stopped the evils of third degree, the poor conditions of jails, the lot of the poor peasants and it is too much to think that like Canute's order to the waves of the ocean or the Pope's bull to the comet, this judicial activism has halted these evils" [p.32 et seq.] Albeit strongly expressed the criticism has to be taken as a protest against boosting the scope of public interest litigation and a warning against too much coming out of it or too quickly. The author's reference to the Supreme Court's

desire to see guidelines for every executive action (*e.g.*, as to the guidelines on which mercy petitions were disposed of by the President of India) though made in a lighter vein is a pointer to possible paralysis of all executive action.

Mr. Hidayatullah enjoys a high reputation for clarity of thought and expression. He has a keen sense of humour and possesses an elegant style. He is proficient in many languages and his expositions carry a scholarly flavour interspersed with Latin and Persian quotations and a fund of anecdotes. His talks on Subramania Bharathi will be of special interest to readers in this part of the country. Each speech and monograph will be read with interest by lawyers, students and all classes of people. It is a book not to be missed.

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3. EMPLOYEES' STATE INSURANCE ACT *by M.R. Mallick*, Second Edition, 1984. [Published by Eastern Law House, Calcutta]. Price. 142/-

4. THE EMPLOYEES' STATE INSURANCE ACT, 1948, *by C.C. Anajwala*, Third Edition, 1984. [Published by C.Jainnadas & Co., 146-C, Shamaldas Gandhi Marg, Bombay-400 002]. Price Rs.44/-.

The Constitution contains many provisions relating to social security. Articles 23, 24, 38, 39, 42, 43 and 47 bear on the matter. There are different social security legislations and among these the E.S.I. Act holds an important place. It is the first social insurance legislation in this country. Enacted in 1948, the Act has been amended a number of times. Of these the Amending Acts of 1975 and 1984 have made far-reaching changes. The E.S.I. scheme has a coverage of over 3 crores of workers and members of their families with liability resting on State Governments for provisions of reasonable medical, surgical and obstetric treatment to them. Insured persons are eligible for sickness benefit, excessive sickness benefit, maternity benefit, disablement benefit, dependant's benefit, medical benefit, occupational disease benefit and funeral benefit. The wage ceiling limit of an employee or workman was fixed at Rs.500/- to qualify for the benefits under the Act of 1948. The ceiling limit was raised to Rs.1,000/- per month by the Amending Act of 1975 and it has been raised still further by the Amending Act of 1984. The Amending Act of 1975 also tightened the provisions for the realisation of contributions etc. Section 85-B was inserted empowering the E.S.I. Corporation to recover damages from an employer for non-payment of arrears of contribution. There can be little doubt that the provisions of the Act if properly implemented could contribute a great deal to ameliorate the various hazards which a worker faces while working in a factory or establishment.

Mallick's book provides commentary section-wise on the Act. It gives besides, the Employees' State Insurance (Central) Rules, 1950; the Employees' State Insurance (General) Regulations, 1950; the Bombay Employees' Insurance Court Rules, 1951; Mysore Employees' Insurance Court Rules, 1954; United Provinces Employees' Insurance Court Rules, 1952; and West Bengal Employees' Insurance Court Rules, 1955. It provides further the text of the Employees' State Insurance (Amendment) Act, 1984. The commentaries are lucid. The inclusion of the text of the 1984 Amending Act has added to the utility of the work. The Employees' and the Employers' Guides given by the author form a helpful feature. The present edition has also brought up to date the case law on the provisions of the Act. It has also taken note of the extension of the provisions of the Act in several States to certain shops and establishments within their territories. The introduction contains valuable information relating to employees' insurance. All in all the book will be of much help to lawyers and Judges, employers and employees, trade unionists, students and others.

Anajwala's book gives a fairly wide coverage of the subject and should appeal specifically to readers in Bombay. It gives running comments section-wise.

Annexures A to D contain respectively the Employees' State Insurance (Central) Rules, 1950; the Employees' State Insurance (General) Regulations, 1950; the Bombay Employees' Insurance Court Rules, 1951 and the Bombay State Employees' (Medical Benefit) Rules, 1954. Annexure E gives various Notifications. The E.S.I. (Amendment) Act of 1984 is not noticed. The introduction in the present edition is more comprehensive than that in the earlier editions bringing out the Hoshing Committee's main recommendations on the working of the E.S.I. Corporation with particular reference to the administration of medical and other benefits. The daily rates of the various benefits available to the insured employees of different wage groups have been set out in a Tabular Form Factories and industrial establishments, employers and employees, lawyers and others will find the book informative and affording valuable assistance.

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5. LAW OF COMPANIES AND MEETINGS *by B.A. Masodkar*, Judge, High Court of Bombay, 1984. [Published by N.M.Tripathi Private Limited, Bombay]. Price Rs.100/-

The company is a form of business organisation distinct from partnership and other collective ways to carry on business activity by several individuals under a common umbrella and invested with a legal personality. The modern concept of a company is that it is not a mere creature of contract but an extension of the public law. One created or recognised as such by the specific law it has to act in keeping with public interests and not merely with the private interests of those who are part of it. Its reach to-day is limitless. The growth of company affairs is enveloping every ffield open to economy. Basically an economic structure the company covers all the fundamental social activities. Wielding as it does enormous power, to control its working various legal instrumentalities have been established.
The book under notice is an endeavour to serve both as a tool for the professionals as well as a guide to those concerned with the working of a company. The book is divided into 3 major parts. The first part describes the nature and structure of a company in five chapters under the captions Initiation, Incorporation, Instruments, Instrumentality and Inclosure. The third part relates to the functioning of the company and the law of meeting. It consists of 3 chapters under the headings Composition, Categorisation and Convention. The second part is just one chapter setting out the principles of Interpretation applicable to the other two parts. Chapter V standing independently contains an exposition of the principles of Natural Justice referring to the fact that in company administration and particularly in the conduct of meetings occasions may arise where these principles will be attracted.

The author's exposition is cogent and attractive. His style is refreshingly vigorous and neat. Leading decisions, English and Indian, have been taken into account. The work will serve the need to understand and apply the principles to the practice of company management.

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6. INDIAN INCOME TAX LAW AND PRACTICE *by Sukumar Bhattacharya*, 16th Edition, 1984. [Published by Eastern Law House, Calcutta]. Price Rs.72/-

Reducing one's liability to taxation of income to a minimum by judicious tax planning is quite legitimate and is in line with the natural tendency of a person. The border line between such planning and what would amount to an attempt at tax evasion is, however, not easy to grasp. Further the Income-tax Act, as it is, is a highly complicated piece of legislation. Its provisions have also been the subject of frequent amendments. The Income-tax Act has become verily a battle of wits between the tax-enforcing authorities and tax-payers who are apt to get lost in a maze of intricate, obscure, technical and often harsh provisions of the Act. A book ...

stating the principles lucidly and showing their operation in practice by simple and concrete illustrations is always welcome.

The book under review has this object and motivation. That it has passed through sixteen editions since its first publication in 1963 testifies to the need for the book and its popularity. The entire subject has ben covered in 46 Chapters. Suitable illustrations have been furnished to show the principles in their working making the exposition more than theoretical or pedestrian. The Finance Act of 1984 has endeavoured impart a new orientation to taxation policies and has introduced a number of benign provisions relating to taxation of income. Rationalisation and reduction in the personal rates of tax, raising the maximum limits for employees' salaries, revised approach to capital gains taxation etc. are some of the noticeable features. A supplement to the present edition containing the latest aspects of the Income-tax law stemming from the Taxation Laws (Amendment) Act, 1984, together with the author's annotations is provided enhancing the utility of the work. The case law rendered since the publication of the last edition has been carefully analysed and taken into account.

The author's exposition of the law is lucid and analytical.The notes provided are fairly exhaustive. The book is bound to meet all the requirements of Income-tax lawyers, tax-payers, enforcement authorities and students.

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7. MOGHA'S INDIAN CONVEYANCER, by *Justice Prem Prakash*, Retired Judge, Allahabad High Court, Ninth Edition, 1984. [Published by Eastern Law House, Calcutta]. Price Rs.115 : $ 34 : £ 20/-

Drafting of documents forms an important area calling for practical application of legal principles in a proper and skilful manner. The conveyancer should possess a knowledge of the background law and a good understanding of the nature of the document to be drafted and its intended purpose. Bad drafting breeds litigation. A book enabling its users to grasp the essential principles of conveyancing in a methodical manner is always a "must" in every library whether of a lawyer or a lay-man.

The instant book provides a complete set of fully drafted precedents *vis-a-vis* the major areas of conveyancing which with slight adjustments can be used in particular situations. As many as 423 precedents have been given. An introductory note is attached to the precedents in relation to a particular matter setting out the basic principles concerning each subject. The stamp duty and registration rules are also covered. In giving the basic principles leading decisions have been taken into account and selective citations have been made. The statement of principles is such as to eschew any confusion even by laymen; for instance the statement that "as the Registration Act applies to the whole of India and to Muhammadans also, if a gift is made by a deed, the deed must always be registered" (Page 211); the Will is "a secret and confidential document which the executant is never ordered to produce" (Page 804) etc.

The book under notice provides coverage of all the important aspects of conveyancing. The Indian milieu and needs are reflected in the precedents. The presentation is simple, lucid and excellent.

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8. DISCIPLINARY ACTION AGAINST GOVERNMENT SERVANTS AND ITS REMEDIES by *K.D. Srivastava*, Fifth Edition, 1985. [Published by Eastern Book Company, Law Publishers and Booksellers, 34, Lalbagh, Lucknow]. Price Rs.225/-

Public service, for efficient functioning call for the highest integrity, devotion to duty and utmost discipline on the part of its members. It has to be above politics. The British Civil Service has served as a model and justly enjoys an enviable reputation in this respect. A welfare State involves a spread-over of Government activities and control

in the social and economic fields. Employment in government service consequently has been steadily expanding. Modern conditions of life have, in our country, in some respects affected the sense of discipline and absolute devotion to duty on the part of the government servants. Thus sometimes the employees are using the methods adopted by industrial employees to achieve their purpose, methods like resort to strike, gherao etc. They have been at times found participating in anti-national activity. The implementation of the constitutional provisions for the protection of the public servants has become a major field of litigation. While the 'pleasure tenure' theory stemming from the Common Law view of master and servant relationship being one of *durante bone placito* no longer operates, whether and how far the protection afforded by Article 311 of the Constitution has been effective has led to differing opinions. At the same time how far the impact of the Article on the Government as an employer has been to leave it in the lurch unable to exercise full control over its servants which is necessary for the due and efficient discharge of its great responsibilities of administration has also evoked conflicting conclusions. A very recent decision of the Supreme Court by a majority judgment of 4 to 1 has held that a government servant can be dismissed or removed from service without an enquiry provided it was in the public interest and, in the process overruled an earlier decision of 3 judges of that court to the contrary in *Challappan's case* (A.I.R. 1967 S.C. 1260). The decision has again come in for criticism. Such being the position, a book containing a careful and comprehensive examination of the problem of Disciplinary Action against Government Servants and the Remedies available to the aggrieved person would always be welcome.

The book under review aims at serving as a comprehensive and practical book dealing with Dismissals, Removal, Discharge, Suspension, Reduction in rank, Retrenchment, Compulsory Retirement, Superannuation, Resignation etc. Each chapter commences with a synopsis of the topics discussed in the particular chapter. The latest decisions, Indian and English, have been considered and the citations are relevant and profuse. From the very opening sentence: "The Code of Conduct of Government Servants is both written and unwritten", citing *Laxmi Narain v. Dt. Magistrate*, A.I.R. 1960 All. 55, impressing upon the reader that the constitutional and statutory provisions are by no means exhaustive, to the end of the book the exposition which adopts the narrative style holds the attention of the reader.

The entire subject is covered in 11 Chapters under the captions, General; Government Employment and the Constitution; Pleasure Tenure; Public Service Commission; Recruitment; Government Employees; Conditions of Service and Rules; Enquiry; Reasonable Opportunity; Penalties and Remedies. There are also 9 Appendices containing respectively All India Services Act, 1951; The Public Servants (Inquiries) Act, 1850; The All India Services (Conduct) Rules, 1968; The All India Services (Discipline and Appeal) Rules, 1969; The All India Services (Confidential Rolls) Rules, 1970; The Central Civil Services (Conduct) Rules, 1964; Central Civil Services (Classification, Control and Appeal) Rules, 1965; The All India Services (Conditions of Service and Residuary Matters) Rules, 1960; and Central Civil Services (Temporary Service) Rules, 1965.

The book is full of information analytically presented. It is bound to afford valuable assistance, to judges and lawyers, Government and its employees, students and others.

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9. DISCIPLINARY PROCEEDINGS (IN INDUSTRIES AND ADJUDICATION) *by R.R. De*, Second Edition, 1984. [Published by Eastern Law House, Calcutta]. Price Rs.102/-

Ours is a mixed economy. To-day State as well as private enterprises operate side by side. The State has undertaken a number of industrial activities under

constitutional provisions and the public sector is an ever widening one. Thousands of people are now industrial workers. Maximum production can be achieved only if industrial discipline is observed and maintained. Breaches of discipline often lead to violence and misery. They have to be tackled with imagination and properly adjudicated Employees in State-owned enterprises through statutory corporations and Government companies enjoy constitutional protection afforded by Article 311. In the case of employees of enterprises not coming within the definition of 'State' in Article 12, special laws have been enacted conforming to Part III of the Constitution regulating the employer-employee relationship. In such cases apart from the domestic tribunals constituted by such industries which are tribunals within Articles 136 and 227, the High Court has power to quash the orders of the management in the exercise of writ jurisdiction. Neither the Industrial Disputes Act nor the rules framed thereunder lay down any procedure to be followed by the domestic tribunals in investigating alleged indiscipline and misconduct by the employees. It is however clear that the enquiry should be in a judicial spirit and in accordance with the principles of natural justice. The approach should be humanistic and not legalistic.

The book under review notices all these aspects and has considered the subject of Disciplinary Proceedings in Industries and Adjudication in 16 Chapters. The Chapters are titled: (1) Domestic Enquiry; (2) Discharge simpliciter; (3) Raising of Industrial Disputes by discharged or dismissed workmen before Labour Courts and Tribunals; (4) Adjudication of Industrial Disputes by Labour Courts and Tribunals under section 11-A of the Act; (5) Power of Labour Courts, Tribunals to grant relief to discharged or dismissed workmen; (6) Representation of parties to proceedings before Labour Courts and Tribunals; (7) Misconduct - Meaning and Scope; (8) Domestic Enquiry and Criminal cases; (9) Preliminary Enquiry, charge-sheet and suspension; (10) Domestic Enquiry; (11) Discharge Simpliciter; (12) Raising of industrial disputes by discharged or dismissed workmen before Labour Courts and Tribunals; (13) Adjudication of Industrial Disputes relating to discharged or dismissed workmen by Labour Courts and Tribunals under section 11-A of the Industrial Disputes Act; (14) Powers of Labour Courts, Tribunals to grant relief to discharged or dismissed workmen; (15) Representation of parties before Labour Courts and Tribunals. Chapter 16 is an addition giving select case-law on the rights and obligations of the employer and the employees of the public and private undertakings and the constitutional safeguards available to the employees against arbitrary actions of the management. In the Appendices - there are four of them - are given various specimen forms.

The instant book presents in a cogent and concise manner the salient features of the laws of disciplinary action in industrial establishments. Case law has been carefully analysed and the enunciations are accurate: The book will be a useful and practical guide to Judges and lawyers, persons managing industries, students and others.

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10. ANAND AND IYER'S SPECIFIC RELIEF, 9th Edition in 2 Volumes, 1984. [Published by Law Publishers, Sardar Patel Marg, Allahabad-1]. Price Rs.300/- per set of 2 Volumes.

Specific relief means a relief in specie. It is a remedy aiming at the exact fulfilment of an obligation. It is thus a form of judicial redress and pertains to the law of procedure. Specific relief is distinguished from compensatory relief or award of damages. Courts of equity in England, to do complete justice, gave a fillip to the evolution of equitable remedies not available at Common Law. In India, the law relating to specific relief is contained in the Specific Relief Act, 1963, replacing the earlier Act of 1877. The Act is not however exhaustive. The equitable remedies covered by the Act are classified as (1) Recovery of possession, (2) Specific performance of contracts, (3) Rectification of instrument,

(4) Rescission of Contract, (5) Cancellation of Instruments, (6) Declaratory decrees and (7) Injunction. Specific relief will be available only for enforcing individual civil rights and not for enforcing a penal law.

The book under review is divided into 2 volumes. The first volume takes in sections 1 to 30, and the second, sections 31 to 44. The book provides a running commentary section-wise. Comparative Charts of the sections of the 1963 Act to the sections of the 1877 Act are provided. The annotations are fairly full and easy to follow. Case law has been brought up to date. It is not clear what "expotential growth" at the bottom of page vii means. The words at page 30 "Whitely and stokes" in their introduction suggest two persons whereas there seems to have been only one. The words "destination of devolution" at page 65 should be destination and devolution". The observation at page 26 relating to the new Specific Relief Act that it is "like our Constitution the rich embodiment, the saturated essence of legal wisdom and legal experience" is a rather flowery than dispassionate verdict. These however do not detract from the value of the book. The book will be useful to the Bench and the Bar alike.

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11. LAW OF SPECIFIC PERFORMANCE, *by L.C. Goyle,* 1984.[Published by Eastern Law House, Calcutta]. Price Rs.68/-

Specific peformance is one kind of specific relief. It is a court order to a person to fulfil his obligation under a contract. It is a discretionary remedy and cannot be had as a matter of right. The discretion has to be exercised judiciously and not arbitrarily or capriciously. The remedy is not available in certain cases, for example, for the enforcement of a contract of employment or when the payment of damages would be an adequate remedy. It forms the subject-matter of Chapter II of the Specific Relief Act. Provisions having some bearing on the subject are also to be found in the Contract Act, Sale of Goods Act, the Trusts Act and the Civil Procedure Code.

The book under notice purports to consider in detail the principles that govern the exercise of jurisdiction, the type of contracts that can be specifically enforced, the persons who can claim specific performance, the personal bars on the persons so claiming, the defences to an action for specific performance etc. The study is spread over 4 Chapters under the captions. Eligible and Non-eligible Contracts. By and against whom Contracts Enforceable. Defences under Law of Contracts and Jurisdiction and Powers of Court. Chapter 5 consits of Appendices setting out the concerned provisions of the Specific Relief Act, Contract Act, the Indian Trusts Act and the Civil Procedure Code. The author has examined the case law in depth. He justly points out how we have travelled a long way from the time when Jessel M.R. could postulate that "no principle can be more sacred than that a man shall be compelled to perform his contract" Apropos Justice Bhagwati's observation in People's Union for Democratic rights v. Union of India, A.I.R. 1982 S.C. 1473, "Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer, but he cannot be forced to continue to serve the employer without breaching the injunction of Article 23", he rightly comments "It is not understood how this is going to help the poor man who is first made to sign a contract for a term and if he later on finds a better job and has to leave that old job, he has to pay damages for breach of contract". His examination of the scope and implications of the requirement laid down by the Privy Council in *Ardeshir's case*, A.I.R. 1928 P.C. 208 at 216 that where specific performance is sought, the plaintiff must plead and that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the suit" is very thorough and analytical. The book examines the remedies open to the parties in a satisfying way. The exposition of the principles is lucid and interesting.

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12. LEGAL AND CONSTITUTIONAL HISTORY OF INDIA *by M.Rama Jois*, 1984 in 2 Volumes. [Published by N.M.Tripathi Private Limited, Bombay]. Price Volume 1. Rs.32-50. Volume 2. Rs.21/-

Legal and Constitutional History of India is one of the compulsory subjects of study by the law students. Though there are some books on Legal History there is however no text-book covering the entire spectrum on this subject including the ancient Indian system. The present work is designed to fill this void. The author is a sitting Judge of the Karnataka High Court with earlier teaching experience in law. The two volumes between them cover the entire topic of Legal and Constitutional History of India.

The first volume deals with the ancient Indian Legal, Judicial and Constitutional systems, in short both vyavaharadharma and raja dharma. Vyavahara-dharma covers the concept and definition of dharma or law, substantive civil and criminal laws arranged topic wise, law of evidence rules of interpretation and the administration of justice including the procedural or adjectival law. Under Raja-dharma or Constitutional Law are described the objectives set before and purposes intended to be achieved by the State, the duties and responsibilities of the Ruler, place and role of the judiciary, council of ministers, taxation policy, foreign policy and organisation and administration of the departments of Government including raja-dharma. How the substantive law and the procedural rules were observed in practice can be gathered from the two appendices which include full texts of a royal charter issued in 592 A.D. and a judgment by a Mithila Court in 1794 A.D.

The second volume covers the legal judicial and constitutional history of India during the Muslim rule and the British rule, the history of the Constitution of India (1950), the salient features of the Constitution, the judicial system, the work of the Law Commission appointed under the Constitution and a survey of the history of the Constitution till the 45th Amendment.

In the review copy of the book pages 43 and 44 in Volume I are blank, likewise pages 46 and 47. The former contain matter relating to the Sukraniti Shastra and the latter matter relating to the Mitakshara. In the list of the nibandhas mentioned as the more important ones at page 24 one misses the Kalpataru of Lakshmi Dhara which according to Prof. K.V. Rangaswami Aiyangar "occupies a unique position" and is "the source of many subsequent digests" (See his article on Lakshmi Dhara, and Kritya Kalpataru in the Golden Jubilee number of the Madras Law Journal, at pages 162, 166). So also at page 58 in the list of legislative enactments modifying Hindu Law the Hindu Disposition of Property Act (XV of 1916) legalising bequests and transfers of property in favour of an unborn person does not find a place. These however are matters of individual predilections and opinions. The author's assessment of Apastamba that he was not a "conformist" but a "revolutionist" (Page 25, Vol. I) will be generally accepted The author's observation at page 670, Vol. I that "in spite of all the in-built checks and balances provided in a written Constitution through different institutions, such as legislature, council of ministers, judiciary and the like, unless the persons who become functionaries of those institutions assert their right and check boldly, without fear or favour, the dictatorial tendencies of a 'constitutional ruler' in an effective manner, all the institutional safeguards would be merely on paper and the misuse of power by a despotic ruler would continue unabated" is unexceptionable and will find total agreement.

The book under review is a work of great merit and learning packed with information, setting out in a historical perspective the ancient as well as the modern legal systems in India. It is a welcome publication and every reader will be a beneficiary.

ARREARS IN COURTS

By

M. Krishna Rao, (Retd. Judge, A.P. High Court), Hyderabad-500 029.

The problem of Court arrears has now assumed alarming proportions. We hear several voices expressing concern about the mounting arrears in all the Courts upto the Supreme Court. I should say that the problem is not being solved, though the need for reform is realised by one and all. I think unless some drastic measures are adopted, there is no hope of solving the problem in the near future. Neither increasing the number of Judges, nor increasing their salaries will be an answer. The bottle-necks under various enactments should be identified, so that appropriate legislative amendments may be made to eliminate them. In the prevailing legal system, the hierarchy of appeals is creating the greatest hurdle in the speedy disposal of litigation. At some stage or the other, we have to accept the finality of the decisions, for even if there were to be a further appeal from the Supreme Court, it is quite possible that some of the decisions of the Supreme Court may be reversed.

2. *Repeal of Section 115, Civil Procedure Code (V of 1908), Section 104 and Order 43, Rule 1:* The main obstacle in the progress of a suit is the High Court's power to interfere with interlocutory orders. I, therefore, suggest that the civil revisions against interlocutory orders and appeals against interlocutary orders should be completely abolished. Execution matters should also be made final without any further revision to the High Court.

3. Section 100, Civil Procedure Code, providing for a second appeal should be abolished. A first appeal should be provided to the District Court upto the value of Rs.50,000/-, without a further appeal to the High Court, while an appeal may be provided directly to the High Court in matters above Rs.50,000/-.

4. *Letters Patent:* The Letters Patent, which provides for an appeal from a single Judge to a Bench of two Judges in the High Court, should be completely abrogated. So far, the amendments are eing introduced by slow degrees, but there is no real reason why the provision should not be scrapped altogether.

5. *Civil Procedure Code (V of 1908):* It is quite possible within the existing framework to speed up the disposal at the trial stage. It is needless to emphasise the duty of the Courts not to grant adjournments indefinitely for filing Written Statements or for taking other steps in the suits. Provisions for bringing the Legal Representatives on record may be simplified to avoid delays by providing that it is sufficient if one of the legal representatives is brought on record, instead of all of the legal representatives, which is a time-consuming task. The provisions relating to preliminary and final decrees should be completely abolished and the Court should dispose of the suit at one stage just like any other suit. If we take the statistics, the oldest suits are those in which preliminary and final decrees are passed, with a Commissioner in between taking several years for his inquiry.

6. *Article 136 of the Constitution (1950):* This Article providing for Special Leave to Appeal to the Supreme Court should be completely abolished, or at any rate, it should be excluded in the case of interlocutory orders. When a High Court disposes of an appeal and sees no reason to grant a Certificate for appeal to the Supreme Court, there is really no need for the Supreme Court to consider whether the case is fit for further appeal or not. If the High Court does not find that it is a fit case for appeal to the Supreme Court, the matter should end at that stage. It is a matter of common knowledge that to-day, the Supreme Court is flooded with Special Leave Applications, and most of the time is taken up for the disposal of the Special Leave Petitions.

7. *Writ Jurisdiction:* Coming to the Writ

Jurisdiction, the various distinctions between the types of Writs as obtaining in England should be given a go-by in the Indian High Courts. It will be sufficient if Articles 226 and 227 of the Constitution of India are replaced by a single provision providing for an application to the High Court complaining against any order of the Government or authority or other Officer, conferring power on the High Court to give appropriate relief to the applicant. The application may be called a Writ Petition, as we have been accustomed to describe the extraordinary remedy as a Writ.

8. *Arguments:* Some kind of reform should be introduced in the mode of arguments and the time taken for arguments in the Court. It is advisable to adopt the procedure of submitting Written Arguments as in England and America and also to fix the time limit for arguments in Court as is done in the American Courts.

9. *Precedents:* We find that a greater part of the Court's time is taken up in the citation of cases and reading the decisions as part of the arguments. If the practice of Written Arguments is adopted, the time taken for citation of cases can be minimised. In any event, the Advocates and Judges should restrict the citations to the minimum number of cases in support of their arguments. If there is a Supreme Court Judgment on a particular subject, it should be sufficient to cite only one authority and not several authorities on the same subject. Again, when there is a decision of the Supreme Court, citation of High Courts on the same point should be avoided.

10. Judgments: Regarding the practice of pronouncing Judgments also, some changes have to be brought. In the Supreme Court, it may not be really necessary for each of the Judges to prepare a lengthy Judgment. The unanimous view of the Court may be expressed by one Judge and it is not really necessary to publish the dissenting Judgment. In the High Courts also, where there are Benches consisting of more than one Judge, separate Judgments should be avoided as far as possible. So far as Full Benches are concerned, it is desirable that the Judgments are brief. When two Judges differ, the view of the senior should prevail without hearing by a third Judge. The practice of reading the full Judgment in Court should be given up. It will be sufficient if the operative portion is read out.

11. Income-tax Act (43 of 1961): The Income-tax Act is being amended almost every year, but the procedural aspects are left untouched so that the disposal of cases is delayed beyond reasonable limits, resulting in accumulation of large arrears of Income-tax. The provisions relating to reference to the High Court and the further provision for asking the High Court to direct a reference from the Tribunal to the High Courts are time consuming procedures. Instead, the procedure for appeals may be simplified as follows:

Against the order of the Income-tax Officer, there should be an appeal straightaway to a Tribunal consisting of two Members, with a provision that the opinion of the senior Member should prevail. There may be more Tribunals consisting of two Members in each particular State, according to the volume of work. The appeal before the Assistant Commissioner is wholly unnecessary and there is no need for three Members of the Income Tax Tribunal to dispose of an appeal. Against the order of the Tribunal, an appeal may be provided to the High Court, or directly to the Supreme Court, according to the valuation fixing a limit of Rs.5 lakhs or Rs.10 lakhs. It is also advisable to consider the Constitution of a separate All India Income Tax Tribunal in the place of the Supreme Court to dispose of all tax matters under the Income-tax Act. The powers of the Commissioner under the Act with regard to the revisions should be abolished.

12. Arbitration Act (10 of 1940): Some changes in Indian Arbitration Act, 1940, are also necessary. The provisions of Sections 30 and 33 enabling the parties to challenge the validity of an Award

should be confined only to the ground of bias and all other grounds should be deleted. The existing ground of 'error apparent on the face of the record' does not admit of a precise definition and has been creating a lot of confusion to the Courts, inspite of the decisions of the Supreme Court. There is a tendency in the Civil Courts to go into the correctness of the Award, ultimately landing in confusion.

Section 17 which provides for making the Award a decree of Court, should be deleted and the Award should be straightaway made executable, as if it were a decree of a Court.

13. Industrial Disputes Act (14 of 1947): Under the Industrial Disputes Act, section 10 providing for reference of a dispute by the Government, not only contributes to delay in the matter of the workmen getting relief, but also it operates to deprive the worker an opportunity to seek relief in a Court of law straightaway.

14. Insolvency Law: In this case also, it is sufficient if there is a single appeal either to the District Court or to the High Court, and the provisions for revision should be abolished.

15. Small Causes: Small Causes upto the value of Rs.2,000/- should be made final with the decision of the first Court, as if it were an arbitration award, and all other matters may be taken on the original side with a single appeal to the District Court. The Provincial Small Cause Courts Act can be repealed as it serves no useful purpose.

16. Rent Control Act: Similarly, under the Rent Control Act, the intermediate appeal to the Subordinate Judge should be abolished, and there should be an appeal straightaway from the Rent Controller to the High Court open for challenge on all points.

17. Likewise, under other Acts, the appeal should be restricted only to a single stage, either to a Tribunal or to a High Court, or to the Supreme Court, depending on the valuation.

18. Revisions: Revisions of any kind to the High Court from other Statutes should be renamed as appeals against orders and the language of the revisional powers similar to section 115, Civil Procedure Code, should be completely removed from the Statutes, as the scope of the said provision gives rise to a lot of controversy.

In conclusion, I strongly feel that unless some such drastic changes are introduced, there is no hope for wiping out the backlog of cases.

BOOKS REVIEW

13. LAW OF AGENCY *by V.G.Ramachandran*, 1985 Edition. (Published by Eastern Book Company, 34, Lalbagh, Lucknow-226 001). Price Rs.175/-

An agent is a person who is authorised or delegated to transact business for another. Broadly speaking agency arises where one person has the authority or capacity to create legal relations between his employer (principal) and third parties. The law of agency in this country is contained in sections 182 to 238, being Chapter X of the Indian Contract Act, 1872. The law set out in these sections is not exhaustive. On questions for which no answer could be found in the Act resort is had to the principles of English law. Some well known works on the law of agency are those written by Bowstead in England and Story in the United States. The book under review is reprinted from the author's Law of Contract in India, as a separate volume, with some additional features.

The book under notice expounds the law as stated in each section of Chapter X. The Introduction points out that the Contract Act does not draw distinctions between the several classes of agents and that mercantile or commercial agents form a class "on which we have to concern much in our study of the law of contracts". This is largely true. The author has freely drawn on the standard works, on the American Restatement of the Law of Contracts, on the Law Commission's Report and other works for information and given a full statement of the law of agency in all its aspects. Case law, English and Indian have been profusely cited as also some American decisions. The book is a welcome addition to the literature on the subject of agency.

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14. COMPARATIVE CONSTITUTIONAL LAW *by Durga Das Basu*, 1984. (Published by Prentice-Hall of India Private Limited, M-97, Connaught Circus, New Delhi-110001. Price Rs.150/-

[illegible]

has come to us from Vedic times. Tennyson's dream of "the Parliament of man, the Federation of the World" continues to remain a dream. The author's assessment of the League of Nations and the United Nations as showing that even erstwhile warring nations are bound to join together for settlement of common problems which are more important than the national causes for which they have been fighting is both generous and optimistic. These very organisations seem to have been so shaped that even at their birth they carried the seeds of futility and were intended merely as a sop to the sufferers of war and the idealists. Mathew Arnold defined culture as the art of mutual harmonious living and the hall-mark of culture was stated by Ogilvey to be unselfish conduct. Judged by these tests there seems to be little evidence of it on the part of the super-powers. Be that as it may, as the author justly observes (page 3) it is from a study of comparative systems of law that we may discover the universal principles of jurisprudence which alone may serve as a standard for measuring different national systems and for promoting international integration - thus paving the way for the goal of the Federation of the World through peaceful means.

The present volume is the first of a series of ten volumes on Comparative Constitutional Jurisprudence. The other nine volumes planned to be brought out are: Comparative Federalism: General Principles; Comparative Federalism: Particular Powers; Human Rights in General; Human Rights in Particular; Judicial Review; Amendment of Written Constitution; The Executive; The Legislature; and the Judiciary. The volume under review titled Comparative Constitutional Law is designed to serve as an introduction to as well as an epitome of the entire series. It is really concerned with the legal interpretation of the different constitutions and the universal propositions emerging therefrom.

In the author's words (see preface) "it deals critically with burning topics which currently agitate the public mind, in different lands, for instance, the doctrines

'separation of powers', 'rule of law', 'prospective over-ruling', 'due process', rights to human dignity and privacy, constitutionality of capital punishment; and suggests solutions to the problems in the back-ground of the special circumstances of each particular country and its national Constitution which call for variations, if any, in the application of the general principles arrived at on a comparative study". Two things fall to be noted. Firstly, the study is primarily concerned with the constitutional law of the countries which have adopted the Anglo-American System. Constitutions of countries like the U.S.S.R., China or France and of countries like Pakistan where the constitution is claimed to be based on Islamic principles have been left out. Secondly, there seems to be little point in including a country like Nigeria where *coup d' etat* has become frequent and the constitution a mere paper.

How the comparative study of political and legal institutions may persuade the importation of new ideas into the body politic of a foreign State is illustrated by the use of referendum and the trend towards a written constitution in a country like the United Kingdom. Thus the Referendum Act of 1975 was enacted by Parliament to ascertain the opinion of the electorate on the question of the entry of the U.K. into the European Economic Community. Likewise the enactment of the European Communities Act, 1972 and the Northern Ireland Act, 1974 reflect the trend towards the codification of the British Constitution at least in part. The author's exposition is penetrative critical and impressive. The leading decisions have been carefully examined and not taken for granted. The book is a valuable contribution to the literature on Comparative Constitutional Law.

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15. LAW RELATING TO BUILDING AND ENGINEERING CONTRACTS IN INDIA *by G.G. Gajria*, Third Edition, 1985. (Published by N.M.Tripathi Private Ltd., Bombay. Price Rs.300/-

Development in buildings and construction industry, both in the public and private sectors is being achieved all the time. In the task of the execution and completion of a construction work are involved a variety of persons such as the owner-employer, the architect, the quantity surveyor, engineer and contractor. Due to changing economic conditions advances in technology and evolution of new techniques, new terms and conditions are introduced in contracts relating to building construction. Quite often the construction of these terms gives rise to disputes between the concerned parties. Most of the contracts carry an arbitration clause for the settlement of such disputes which are generally decided on merits. There are a number of important judicial pronouncements also on the subject. The decision-making authorities at the different levels must have a knowledge of the relevant principles of law to arrive at uniform and correct decisions on the several questions in the execution and implementation of the contract coming up before them.

The instant book covers the subject in 20 Chapters under the Titles (1) Contracts in General; (2) Definitions; (3) Duties of Architects; (4) Tenders, Estimates, Drawings, Specifications, Formation, Interpretation of Contracts etc.; (5) Words and Phrases judicially interpreted; (6) Performance of contracts; (7) Extras; (8) Price and Payment; (9) Defective Work and Consequences; (10) Approval and Certificates; (11) Breach of Contract; (12) Damages for Breach; (13) Forfeiture and Determination; (14) Materials, Plant, Machinery etc; (15) Assignment; (16) Substituted Contract and Sub-Contractors; (17) Death, Illness, Bankruptcy and Liquidation; (18) Guarantees and Securities; (19) Limitation, Injuries to persons and property and liability to third parties and torts; (20) Arbitration. The texts of the Arbitration Act, 1940, and the Interest Act, 1978, are also provided.

The principles are set out in the light of decisions both English and Indian. In the present edition not only has the case law been brought up to date but new topics have also been introduced, such as calculation of quantities of the work done from the drawings, extension of time for the benefit of the employer, effect of extension of time on damages, issue of injunctions by Courts particularly against the enforcement of Bank Guarantees, acceptance of tenders by public bodies, package deal and Turnkey Contracts, Clerk of Works, implied obligations of the employer to obtain permits and licenses in reference to the contract, deviation limit clauses, consent of contractor obtained under coercion, escalation and ceiling on escalation and some important topics on Arbitration. At page 320 the author has expressed the view that an exceptional case in which specific performance in building contract can be granted is the case of a specialised works when no other contractor is available to perform them. The view is sound and the author's reliance on *Sky Petroleum Ltd.* v. *VIP Petroleum Ltd.*, (1974) 1 W.L.R. 576 is justified. At page 849 in the discussion as to when the Court will issue injunction in case of bank guarantee, the Bench decision in *Vinay Engineering Co.* v. *Neyveli Lignite Corporation Ltd.*, (1985) 1 M.L.J. 426, which has carefully reviewed the case law on the matter could have been usefully included. The book under notice is an extensive work on a highly important topic written in easy style containing a careful and thorough study of it in all its several aspects. It will serve as a valuable guide to lawyers, engineers, builders and others interested in the subject.

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16. LAW AND ETHICS OF CHARTERED ACCOUNTANTS *by S. Banerjee*, 1984.(Pub-lished by Eastern Law House, Calcutta. Price Rs.128/-

It is trite saying that an accountant looks after the people's fortune while doctors and lawyers are ordained to attend to their misfortunes. Accountancy in its present form is a logical corollary to the development of joint stock enterprise and the formation of companies with limited liability. To reassure investors and create public confidence the accounts of companies were required to be audited and reported upon by members of an independent body of experts in accountancy. In India the Chartered Accountants Act, 1949 was enacted according virtual autonomy to the profession vesting in it the regulation and organisation of the profession including also the functions of examining candidates for the profession, granting licences for practising accountancy as a profession and exercising disciplinary functions. At the time of the enactment of the Act the Chartered Accountants Regulation, 1949 was made but this has since been replaced by the 1964 Regulation. The Act and the Regulations provide in effect for education, training, registration and licensing of Chartered Accountants.

The book under notice is divided into 3 Parts. Part I gives the text of the Chartered Accountants Act with commentaries on each section. Part II deals with the Professional Ethics of Chartered Accountants. Part III contains the Chartered Accountants Regulation, 1964 with commentaries. There are also four Appendices. Appendix A gives the Auditor's Certificate Rules, 1932 and Appendix B the Restricted Certificates Rules, 1932. Appendix C sets out the Certified Auditors' Rules, 1961, while Appendix D provides the Chartered Accountants (Amendment) Act, 1959. Leading decisions have been taken into account in the commentaries.

The Part covering the topic of professional ethics is quite interesting.That the practice of the profession calls for the highest degree of professional integrity, rectitude and courtesy on the part of a member is the burden of the song. The rules themselves, as pointed out have been evolved over the years and many of them are the result of unfortunate incidents not specifically prohibited. In India, the rules of ethics are contained in the Act, the first and second schedules thereto and the Regulations. Under section 22 professional misconduct shall be deemed to include

any act or conduct specified in the Schedules but it shall not be construed to limit or abridge in any way the power conferred or duty cast on the Council of the Chartered Accountants Institute under section 21 (1) to inquire into the conduct of the Institute under any other circumstances. The principles of professional ethics have been neatly and lucidly explained by the author.

The book will prove a dependable guide to any professional accountant or auditor whether in independent practice or service and a companion for constant reference.

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17. ADMINISTRATIVE LAW *by V.G. Ramachandran*, Second Edition, 1984. (Published by the Eastern Book Company, Law Publishers and Booksellers, 34, Lalbagh, Lucknow-226 001). Price Rs. 200/-

Discretionary powers of an executive nature are conferred by legislation on Government, ministers, public and local authorities and other bodies and persons for the purpose of giving detailed effect to broadly defined policy. Administrative powers are found in every sphere of public administration. Their exercise is subject to judicial control by means of the doctrine of *ultra vires*. Again Administrative Tribunals are set up by legislation to decide claims and disputes arising in connection with legislative schemes generally of a welfare or regulatory nature. They exist no doubt outside the Courts of law, but their decisions are subject to judicial control through the doctrine of *ultra vires* and error on the face of the record. In India the Supreme Court and the High Courts are expressly vested with the power of judicial review by the Constitution.

The previous edition of the book under review was in 1969. Since then administrative law in India has matured and expanded, necessitating a thorough overhaul of that edition. The present edition runs to 13 Chapters in the place of the earlier 5. It examines all the facets of administrative law. A separate Chapter - Chapter V - has been allocated to the concept of Remedies which deals not only with the writ remedies but also explains the development of the law in the area of administrative discretion, Government privilege against disclosure of documents etc. Chapter VI focusses attention on the remedy by declaratory actions. Chapter VIII deals with delegation of legislative power while Chapter IX deal with State's liability in tort. Chapter X considers the law of estoppel and waiver *vis-a-vis* the State. Chapter XI deals with the abuse of Integrity and Character Sheet and Chapter XII highlights the citizen's right to know and the absurdity of harmful official secrecy. The views of the author would not have lost strength by avoidance of such expressions as "diabolical secrecy in the functioning of the Government", "blue-blooded biased bureaucratic superior" and the confusing use of the words "we" and "I" in the Preface. The author's statement of the law is exhaustive and citation of cases full. A list of the various Tribunals set up under Central Acts is furnished in the Appendix. The book will be of great assistance to the Bench practising lawyers, and academicians.

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18. N.D. BASU'S MOTOR VEHICLES ACT *by S.K. Bose*, Sixth Edition, 1984. (Published by Eastern Law House Private Ltd., Calcutta). Price Rs.110/-

The Motor Vehicles Act, 1939, is a Central enactment. It has been amended by the States from time to time. The States have also made Rules under the Act. Many provisions of the Act form an area of active litigation. A book giving an up to date version of the Act incorporating all the amendments is always welcome. There are many books on the Act but only those with merit have survived.

First published in 1939, the book under notice is now in its sixth edition. It has taken in its sweep all the State amendments incorporating them in the text of the Act. It also gives the Rules formulated by the different States. The provisions relating to the Accident Claims Tribunals set up in the different States under section 110 of the Act are given. Allied and

Cognate Acts and Rules have been added in the nine Appendices at the end. They contain respectively (1) Motor Vehicles (Diplomatic and Consular Officers Vehicles) Registration Rules, 1960, (2) Motor Vehicles (Operation of Commercial Traffic between India and Contiguous Countries) Rules, 1963, (3) The Fatal Accidents Act, 1855, (4) The Motor Transport Worker's Act, 1961, (5) The Inter-State Transport Commission Rules, 1960, (6) The Motor Vehicles International Circulation Rules, 1933, (7) The Motor Vehicles (Third Party Insurance) Rules, 1946, (8) The Motor Vehicles (National Permits) Rules, 1975, and (9) The Motor Vehicles (Driving Licence Fee) Rules, 1978.

The commentaries and annotations provided have duly taken into account the leading judicial decisions. The book is bound to be helpful to practising lawyers and all others concerned with motor vehicles.

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19. DIGEST OF IMPORTANT M.A.C. CASES 1960 TO 1983 UNDER MOTOR VEHICLES ACT, 1939 *by S.D.Dave, 1984.* (Published by Vora Prakashan, Ahmedabad-380001). Price Rs.120/-

Motor Accidents provide a most active area of litigation, and the litigation in this branch of law has been steadily increasing over the years. There is a mass of case law covering many facets of the topic.

The instant Digest is designed as a step towards the compilation of case law in the Law of Tort of Negligence pertaining to the driving of Motor Vehicles for purposes of ready reference. Important case law is digested under different heads and the principles that govern the award of damages in different types of claims have been extracted. The Digest consists of two Parts. Part I covers Fatal Cases and Injury Cases relating to Brain and Skull, Skin, Eyes, Spine, Jaw and Teeth, Arms and Legs etc. Part II covers captions like Passenger's Risk, Liability, Contributory Negligence, Pleadings, Amendments and Issues, Onus of Proof, Assessment of Damages, Deductions etc. The notes against each case in Part I are given under 10 Columns. (1) Serial No. (2) Name of the deceased or injured. (3) Sex and age. (4) Pre-accident occupation and income per month. (5) Nature of Injury and disability. (6) Date of Accident. (7) Date of Trial. (8) Date of decision under Reference. (9) Amount. (10) Reference. Among the cases digested are decisions of English and other Courts reported in the A.C.J. The same mode is adopted in Part II with appropriate columns and jottings under them. The Digest is attractively got up. The publication is bound to be warmly welcomed by lawyers, Insurance Companies, Road Transport Corporations, Accidents Claims Tribunal and others.

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20. THE INDIAN PENAL CODE *by D.S. Chopra.* First Edition 1984. (Published by C.C.Shah & Company, Booksellers and Publishers, Fountain Chambers, Nanabhai Lane, Bombay-400 056). Price Rs.90/-

The Indian Penal Code is now a century and quarter old. Though like everything else concepts of penology and criminology, crime and punishment etc., have been changing, the provisions of the Penal Code have stood the test of time except for amendments here and there. The offence of rape and offences against women had become the subject of intensive agitation in recent years and responding to it Parliament has enacted the Criminal Law (Amendment) Act, 1983 (Act 43 of 1983) inserting in the Penal Code a new section 228-A and replacing the former sections 375 and 376 by the new sections 375, 376, 376-A, 376-B, 376-C and 376-D.

The book under notice contains a commentary on the Penal Code referring to leading decisions. A supplement giving the text of the Amending Act of 1983 is also given. The book will be mainly useful to law students and those interested in the criminal law of the country.

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21. THE LAW OF MONOPOLIES AND RESTRICTIVE TRADE PRACTICES IN INDIA *by H.M.Jhala*, Second Edition, 1984. (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.175/-

Nobody is in business for philanthropy. All is fair in trade and war has never been an acceptable norm. Unfair trade practices and restrictive trade practices are found both within and without the country. What constitutes such practices must depend on many and varying factors. In the U.S. under the Clayton Act an alleged restrictive trade practice will be illegal only if its effect on competition is substantial. Under the European Community Law for the prohibition in Article 85 (1) to apply, the doctrine of appreciable effect on competition has been invoked. In India, a trade practice is to be judged by reference to its effect first on competition, secondly through competition on parties, supply and production of goods and services, and thirdly on public interest like weighing and balancing effect of prices etc. In the international sphere an interesting development is the endeavour of the UNCTAD and other U.N. agencies to frame a model law on restrictive trade practices. On 5.12.1980 the U.N. General Assembly passed a resolution approving the set of multi-laterally agreed equitable principles and rules for the control of restrictive business practices.

The law as laid down in the M.R.T.P. Act of 1969 has been sought to be made more effective and dynamic by the amendments made by Act 30 of 1984. The present edition of the book under notice has considered these amendments in detail. The text of the Amending Act is set out in Appendix I and the effect of the changes has been elucidated in an Addendum at the beginning of the work. In this edition a new Chapter has been added on the International Setting and a new para on Collaboration Agreements. It is a commendable feature of the book that the exposition of the principles is lucid and objective taking into account all the facets of a problem. The present edition maintains fully the excellence of the earlier one. It is sure to prove a valuable guide to lawyers, businessmen and all those concerned with the administration of its provisions.

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22. COMMENTARIES ON THE REPRESENTATION OF THE PEOPLE ACTS *by S.K. Ghosh* First Edition 1985. (Published by Law Publishers, Sardar Patel Marg, Allahabad-211 001). Price Rs.60/-

Broadly speaking democracy is a state in which the people either directly or indirectly through their representatives decide their own affairs. That democracy is essentially suited to the Indian people and was practised at the very root of their social structure in the form of village panchayats in the early days have been widely recognised. Since democratic process is essentially controlled by the people, laws had to be formulated as to how the people's representatives should get into the controlling body vested with the powers of governance of the particular country. Article 326 of the Constitution of India provides for the election of the representatives to the Lok Sabha or House of the People and the Legislative Assemblies in the States, by the citizens on the basis of adult suffrage both for males and females. Elections form an immense business involving delimitation of constituencies, preparation of the electoral rolls, actual conduct of the poll, declaration of the results, machinery to decide technical objections at each step in the process, the Election Commission to adjudicate on challenges to the validity of an election etc. Two Acts of Parliament govern elections, namely, the Representation of the Peoples Act, 43 of 1950 and 43 of 1951. The Act of 1950 provides for allocation of seats in and the delimitation of constituencies for purposes of election to the Lok Sabha and the Legislatures of States, the qualification of the voters, preparation of the electoral rolls, the manner of filling seats in the Rajya Sabha to be filled by representatives of Union Territories etc. The Act of 1951 provides for the conduct of elections to the Houses of Parliament, and the House or Houses

of the Legislature of each State, qualifications or disqualifications for membership of such Houses, corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

The book under review gives the text of the two Acts as amended up to date. Extracts from the Constitution of India of Articles 324 to 329A which make provision for the conduct of elections etc. are given in the Appendix. The text of the Representation of the People (Amendment) Ordinance, 1984 (No.15 of 1984) is given as an Annexure. Comments have been provided under some sections in both the Acts and under the Articles of the Constitution extracted in the Appendix in the light of the Supreme Court decisions and other leading case law. The author rightly points out that section 123 dealing with corrupt practices is a provision of supreme importance. The section has been analysed in depth with citation of all relevant decisions. It is easy to agree with the author's view that the provisions of the two concerned Acts have by and large stood the test of time and actually eight general elections have been gone through. The book will be helpful to lawyers and the general public concerned with or interested in the election procedure.

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23. LAW OF ELECTIONS IN INDIA by *Narendra Chapalgaonker*, First Edition, 1985. (Published by Shree Books, Jagannath, New Osmanpura, Aurangabad-431 005). Price Rs.90/-

Election is the act of choosing or selecting for any office or purpose. In a democracy elections are the medium through which people choose their representatives not only to Parliament and the Legislatures but also to bodies like the Panchayats, Municipal Councils and Corporations, Co-operative Societies and other bodies. Elections are also held to bodies like the Board of Trustees, managements of educational institutions, cultural organisations, charitable institutions etc. Some matters are common to these elections such as qualifications and disqualifications of voters and candidates, conduct of the elections, challenging the validity of the elections and the mode of deciding such disputes. In all cases it is essential that elections are free and fair and purity of elections is ensured. In India elections have become a costly and cumbrous affair. Election is also held for the offices of President and Vice-President of the country.

The book under review is a study of the law of elections in India covering all important problems which are common in respect of all elections. The study is topicwise and runs to 14 Chapters. Chapter I serves as an Introduction. Chapter II deals with Electoral Roll and Chapters III and IV consider qualifications and Disqualifications. Chapter V is devoted to Reservations, Chapter VI to Nominations, and Chapters VII and VIII to Corrupt Practices. Chapters IX and X discuss Election Petitions, Chapter XI deals with Counting of Votes and Chapter XII covers Writ Jurisdiction in Election Matters. Chapter XIII deals with Elections in Meetings and Chapter XIV is devoted to Presidential and Vice-Presidential Election. A note on Anti Defection law is also appended. The book contains a penetrative survey of the law relating to elections in India. Important decisions up to January, 1985 have been taken into account. The exposition is lucid and analytical. There are a large number of typographical errors which could have been avoided. At page 5 Andhra Pradesh is mentioned as a State having a bicameral legislature. Quite recently it has ceased to be so. At pages 79-80 it is stated that denunciation of the corrupt practices is on the English statute books for more than a century and before then corrupt practices were essential feature of British elections. Perhaps the word 'essential' could have been avoided.

The book under notice is bound to be immensely helpful to members of the Bench and the Bar and to all those engaged in the process of election or in its challenge.

24. INTRODUCTION TO SHIPPING LAWS *by A.B. Gandhi*, First Edition, 1984. (Published by Milan Law Publishers, 15/2, Navjivan, Bombay-400 006). Price Rs.55/-

India had sea-borne trade from early times. The country has a coast-line of more than 4200 miles. Though its shipping tonnage exceeds 10 millions, its contribution to world shipping is only about 1.4 per cent. Indian shipping law consists chiefly of statutory provisions adopted from time to time to give effect to international conventions. The statutes thus enacted are the Carriage of Goods by Sea Act, 1925; the Indian Bills of Lading Act, 1956; the Merchant Shipping Act, 1958; the Major Port Trust Act, 1963; and the Indian Port Trust Act, 1908. Apart from these statutes, the Law of Marine Insurance including the Marine Insurance Act, 1963 and its predecessors also forms part of the law relating to shipping. The instant book has dealt with the aforementioned statutes concerning shipping in Chapters I to III and V and VI. The topic of marine insurance is covered by Chapter IV. The Introduction explains the genesis of each of the statutes and its main purpose. The law is given in the narrative form analytically and coherently under each heading taking into account the judicial decisions pertinent thereto. The book will be useful to lawyers, law students and all those interested in the subject of shipping laws..

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25. LAW OF OWNERSHIP FLATS AND APARTMENTS (with special reference to Maharashtra) *by A.L. Karmali*, Third Edition, 1985. (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.150/-

The construction and sale of flats and apartments on ownership basis to solve the accommodation problem in congested urban towns has been successful to some extent. It has become now a permanent feature of the building trade in cities like Bombay. A number of malpractices on a large scale had crept into the trade due to the activities of unscrupulous promoters calling for proper checks and control such as the misuse of the deposits from prospective flat-owners, delay in conveying the title to the land and the building put up thereon, bogus sales of flats to nominees and dummy persons of the builders, defects in construction, differences between the plans shown to the owners and the sanctioned plan, delay in delivering possession of the constructed flats though the agreed date had elapsed, use of sub-standard materials in constructing the buildings, unconscionable delay in forming an organisation of the flat-owners and conveyance of title to the property to the said organisation etc. In Maharashtra the Government on the recommendations of a committee appointed to investigate the problem enacted the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963. As for ownership apartments, New Delhi has enacted the Apartment Ownership Act, 1984 and West Bengal the Apartment Ownership Act, 1972. The Maharashtra Government enacted the Maharashtra Apartment Ownership Act, 1970 to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property.

The instant book is divided into 2 Volumes. The first volume sets out the law of ownership flats. It is spread over six parts. Part I gives the Text of the Maharashtra Act and commentary, the Maharashtra Ownership Flats Rules, 1964 and Notifications. Part II explains the rights of a flat-owner under the Act, Taxation and Ownership Flats, Transfer of Flats and Income-tax Amendment Act, 1981, Tenancy and Licence disputes etc. Part III considers relevant judgments. Part IV deals with Precedents and Part V furnishes Model Bye-Laws of the Flat-owners Co-operative Housing Society. The second volume sets out the Law of Apartment Ownership in four Chapters. The first Chapter gives the text and a detailed commentary relating to the Maharashtra Apartment Ownership Act, 1970. The second chapter contains the Maharashtra Apartment Ownership Rules, 1972. The third chapter sets out the Apartment Ownership Law in Australia

America and Germany. The fourth chapter is devoted to Precedent of Conveyance of an Apartment.

The present edition has lucidly elucidated the complex implications of the Maharashtra legislation enabling both flat-purchasers and promoters to understand their respective rights and obligations. The book has been thoroughly revised and brought up to date. The latest case law has been included. A new chapter on Transfer of flats and the Income-tax (Amendment) Act of 1981 has been added. The book will be found very helpful by lawyers, builders, co-operative societies, flat-owners and the public as well.

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26. COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA *by Marc Galanter*, 1984. (Published by the Oxford University Press, 2/11, Ansari Road, Daryaganj, New Delhi-110002). Price Rs.160/-

The problem of disadvantaged sections of the population has existed in India for quite a long time. To achive an egalitarian society, to create a just social order and to achieve national unity, an elaborate system of compensatory discrimination in the sense of "recompense both for historic deprivations and to offset present handicaps" giving the disadvantaged sections preferential treatment in employment education and government service has been woven into the Constitution. While Article 14 ensures equality before the law, Article 15 prohibits discrimination on the ground of religion, caste etc. Article 16 provides for equality of opportunity in matters of public employment, Article 19 postulates the various freedom rights and Articles 29 and 30 confer protection to minority groups in respect of their language, script, culture etc., Articles 16 (4), 335, 17, 46 etc., specifically recognise the scheduled castes, scheduled tribes and backward classes and guarantee to them protection and preferential treatment. Vast sums of money are being spent every year on this account. Apart from implementing this policy by legislation, the range and sweep of the preferential provisions is being elucidated by the Supreme Court and the High Courts. The provisions have been now for 35 years. Whether the mode of compensatory discrimination has achieved the objectives for which it was adopted and to what extent, whether the benefit of the system has reached those for whom it was intended, whether those benefited have come to regard themselves as a privileged class in their respective communities, the heady occupants of upper class berths - want the benefits to be continued to them indefinitely. Whether the system of compensatory discrimination has done more harm than good to the society as such by placing merit under a handicap on the one hand and breeding a class of people with parasites mentality on the other are matters for dispassionate investigation. The Mandal Commission Report asks for an extension of the preferential treatment to a vastly enlarged group on the basis of caste only and already quite a number of communities have become vocal and are attempting to get included in the list of backward communities. At the same time it has to be recognised that there has been for some time now a mounting confrontation and acrimonious conflict on the question of reservation in educational institutions and government services etc., posing serious law and order problems.

In the book under review, the author has surveyed the history of the disadvantages and the revolt against the same, the special legislative representation as well as the preferential treatment accorded in employment, education and government service to integrate an "excluded" segment of the society into the main stream of national life and the Indian experience with those policies. The study is presented in three parts. Part I sketches the social setting and the historical background of the compensatory discrimination policy, describes the major programmes and their administration and opens the question of assessing their implementation. Part II considers questions like who are the people whose entitlement to equality requires departures from formal equality and the identification of the beneficiaries. Part III

is devoted to a cluster of questions such as the scope of the commitment, the means allowable and the proper limits within which the commitment may operate. The author's investigation and study of the problem has led him to conclude: "The Indian example is instructive: India has managed to pursue a commitment to substantive justice without allowing that commitment to dissolve competing commitments to formal equality that make law viable in a diverse society with a limited consensus. The Indian experience displays a principled eclecticism that avoids suppressing the altruistic fraternal impulse that animates compensatory policies, but that also avoids being enslaved by it. From afar it reflects to us a tempered legalism - one which we find more congenial in practice than in theory" (p.567). By and large the conclusion is just. As to the contribution by the Courts, the author's view seems to be that the Courts have prevented compensatory preference from developing into a general system of communal quotas at the same time ensuring that the compensatory principle is not reduced to mere tokenism.

The book under review is an exhaustive and in-depth study of the subject in all its facets. The survey is dispassionate and highly informative. It will be useful not only to lawyers but also to all those interested in national integration. It comes at a time when an acrimonious debate is going on on the different aspects of the reservation policy.

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27. A.N. GAUR'S ARMS, AMMUNITIONS AND EXPLOSIVES, Fourth Edition, Revised by *K.K.Malik*, 1985. (Published by Eastern Book Company, Lucknow). Price Rs.125/-

The law relating to arms ammunitions and explosives is a part of the penal law of the country. Restrictions and safeguards in relation to the possession of firearms have been imposed in the interests of the State and the maintenance of law and order. The Arms Act of 1859 and the Explosives Act of 1884 as amended from time to time and the Rules framed thereunder furnish the law on the subject. Recently on account of the acts of terrorism and communalism which had manifested themselves in several States and taken an ugly turn stringent laws to curb the open carrying of arms and the improper use of explosives have been enacted.

The book under notice, after a Chapter of prefatory observations sets out the law in two parts; Part I deals with the General aspects in relation to Fire-arms, the juristic considerations about the use of Fire-arms and Application of the principles of Evidence Act and other laws. Part II provides a section-wise commentary on the Arms Act, 1959, the text of the Arms Rules, 1963, the Notifications under the Arms Act, the Explosives Act, 1884 with notes and comments, the Explosive Substances Act, 1908, The Gas Cylinders Rules, 1981, the Static and Mobile Pressure Vessels (Unfired) Rules, 1981, the Explosive Rules, 1983, and the Rules and Regulations relating to Explosives. There are 8 Appendices giving respectively the Indian Arms Act, 1878; the Punjab Disturbed Area Act, 1983; the Chandigarh Disturbed Areas Act, 1983; the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983; the Prevention of Damage to Public Property Act, 1984; the Terrorist Affected Areas (Special Courts) Ordinance, 1984; the Criminal Procedure Laws (Punjab Amendment) Act, 1984; and the Code of Criminal Procedure (Punjab Amendment) Act, 1983. A large body of case law which had grown since the previous edition has been carefully incorporated in the present edition. The book is comprehensive and it is bound to be useful to the Bench and the Bar alike.

The outside wrapper mentions the edition as the Fifth Edition, while at other places it is stated to be the Fourth Edition.

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28. BHATNAGAR'S COMMENTARIES ON THE SOCIETIES REGISTRATION ACT, 1860, Fifth Edition, 1985. Revised *by Vijay Malik.* (Published by Eastern Book Company, Lucknow). Price Rs.60/-

Societies and associations are formed now and then to promote *inter alia* literary, scientific, cultural and charitable objects. Such societies and associations own property both moveable and immoveable as such. To enable such bodies to sue or be sued they must have a legal persona. Such status is conferred on them on registration. The Societies Registration Act, 1860 was enacted to lay down a procedure for the registration of such societies or associations and invest them with the legal status of a corporation or a legal person. This Act is a central enactment. It does not however apply in the State of Andhra Pradesh (Telengana Area), Jammu and Kashmir, Madhya Pradesh, Mysore, Rajasthan, Tamil Nadu and West Bengal where independent legislations have been enacted. Thus for instance in Tamil Nadu, the subject is governed by the Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27 of 1975). Even in the States where the Central Act applies, the States have amended the Act. The instant book has taken note of all such amendments and even though there are independant State Acts the entire commentary has been given under the present Act. A comparative table of the sections of the independant State enactments corresponding to the Central Act provisions given at pages 11 and 12 is a helpful feature. The commentaries carry synopsis headings and are lucid. Leading case law has also been incorporated. The book will prove useful to those for whom it is intended.

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29. RURAL DEVELOPMENT AND HUMAN RIGHTS IN SOUTH ASIA (Report of a Seminar held in Lucknow, 4 to 9 December, 1982, organised by the International Commission of Jurists and Human Rights Institute, Lucknow. (Published by N.M. Tripathi Private Limited, Bombay.

It is generally accepted that the socio-economic structure at the village level in the countries of South Asia has kept the rural poor in semi-serfdom, in a state of abject poverty and subject to domination by the rich farmer, the trader and the money-lender. Human rights may not mean much to the vast majority of illiterate and poverty-stricken people. The U.N.Universal Declaration of Human Rights is to them just a scrap of paper and nothing more. Human rights are inextricably linked with the process of development. The elements of the right to development are to be found particularly in Articles 18, 19, 20, 21, 22, 23 and 28. The Seminar brought together experts with grass-roots experience in rural development matters and concerned human rights from different countries of South Asia and the topics chosen for discussion included the impact of agricultural and economic policies, land reforms, social structures in villages, landless labour, bonded labour, the role of women, the population explosion, tribals and other disadvantaged minorities, migrants, violence and counter-violence, health problems and services and legal services in the rural areas. The most important perhaps among the conclusions reached was that only a strong political will coupled with solidarity among the rural poor and their effective and self reliant organisation can give them the power to combat those that dominate them and enable them to improve and develop the quality of their lives. It was felt that every effort must be made to foster the growth of a countervailing power in the hands of the rural poor to help to determine the nature of the development process and to benefit from it. The instant publication sets out in full the conclusions and recommendations of the Seminar together with the working papers, the opening speech of Chandrachud, C.J., and the keynote addresses of Dr. Clarence Dias and Prof. Upendra Baxi.

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30. A CONCISE DICTIONARY OF LAW. (Published by the Oxford University Press. 1983. Price Rs.150/-.

There are a number of well-known law dictionaries like Stroud's Judicial Dictionary, Bouvier's Law Dictionary, Wharton's Law Lexicon etc. The present dictionary is one cast in a different mould. It is designed primarily for the benefit of persons who though not lawyers need some legal knowledge in pursuit of their day to day work like business people, social workers, chartered surveyors and accountants, civil servants, local government officers, probation officers etc. The dictionary has been compiled by lawyers in understandable language free from technical jargon with an extensive cross-reference system. It reflects also the many recent changes in the law due to the impact of the European Economic Community (EEC) and changes in legislation up to and including the Criminal Justice Act, 1982. In all there are about 1500 entries defining and explaining major terms, concepts and processes of law. The dictionary will prove helpful to law students and those for whom it is intended, not only in England but also in countries where the legal system is founded on English law.

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31. ALSO RECEIVED: பொது மக்களுக்கான சட்ட விளககங்கள், தொகுதி 2 தமிழ்நாடு வீட்டு வாடகை, குததலக கடடுபபாடு சட்டம (Tamil Nadu Buildings (Lease and Rent Control) Act];

மதராஸ நகர குடியிருபபோர் சடடம்

(Madras City Tenants Protection Act) by எம். பி. சுப்ரமணியன, பி.ஏ., பி.எல்.,

First Edition, 1984. (Published by Sri Kanthimathi Noolagam, T22, Gnanavolivu Street, Thirunagar, Jaffarkhanpet, Madras-600 095). Price Rs.6/-

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